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IP address: [REDACTED]

The Commentors Name:

---> Michael Govan

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---> organization : Dia Art Foundation  
---> position : President & Director

Comment Text :

-->May 28, 2004

Ms. Robin Sweeney

Office of National Transportation

Office of Civilian Radioactive Waste Management

U.S. Department of Energy

1551 Hillshire Drive, M/S 011

Las Vegas, NV 89134

VIA FACSIMILE: 1.800.967.0739

Dear Ms. Sweeney:

On behalf of Dia Art Foundation, I appreciate the opportunity to comment on the Department of Energy (DOE) selection of an appropriate alignment for the rail line to the Yucca Mountain repository site. Before addressing the alignment issue, however, I must reiterate and expand our comments opposing the DOE's selection of the Caliente Corridor.

1. We object to DOE's selection of the Caliente Rail Corridor because a rail line in that corridor would have significant negative impacts on cultural, socioeconomic, and wildlife resources. A rail line in the Caliente Corridor will have significant adverse visual and other impacts on an important cultural resource, a massive modern sculpture called "City" by artist Michael Heizer. Both the main Caliente corridor and the Garden Valley Alternate pass within 2-3 miles of the sculpture, and using either one would inflict an indelible wound on the landscape and fatally mar the view shed of the sculpture. In addition to the visual impacts, construction and operation of a rail line would destroy the prevailing silence that is essential to the sculpture. These impacts on the "City" sculpture were not identified in the FEIS, and DOE did not consider them before stating a preference for the Caliente Corridor. Yet these impacts would virtually destroy the sculpture, a cultural resource of national and international importance.

If the "City" sculpture project were not completed as planned due to the adverse impact of the rail line, this termination would have negative economic impacts on the surrounding communities. "City" has created many jobs for workers in the surrounding area, and to the degree possible, local materials have been used in the project. To date, over \$20 million has been spent, and the project is 60% completed. In addition, once the sculpture is finished, visitors to the artwork and local employment for the maintenance of the project will have a positive ongoing effect on the local economy. Construction of a rail line in the Caliente Corridor, as it is currently located, would lead to termination of the project's economic benefits to the surrounding communities. These socioeconomic impacts were not identified in the FEIS, and DOE did not consider them before stating a preference for the Caliente Corridor.

2. We appeal to DOE to consider the impacts on the "City" sculpture and the surrounding Garden Valley and to utilize alignments that would mitigate the impacts on this important cultural resource by avoiding Garden Valley entirely. For example, the rail line could follow the highways from Caliente to the Yucca Mountain site: US 93 to NV 375 to US 6 to US 95. This highway alignment passes near the towns of Caliente, Hiko, Warm Spring, Tonopah, Goldfield, and Beatty. Some residents and officials of these towns appear to wish the rail line to pass through their communities because they believe it will bring economic development opportunities. The highway alignment also would take advantage of existing right-of-ways, avoid disturbing undeveloped valleys and bifurcating ranches and grazing allotments, facilitate construction of the rail line by providing easy access for workers and construction materials, and increase the safety and security of rail shipments by facilitating surveillance and emergency response.

Another alignment that would avoid Garden Valley would pass through Coal Valley to the east. While this alignment is not ideal because of its negative impact on the surrounding environment, and does not have the support of either the neighboring ranchers, or of Michael Heizer to the extent that he is a resident and a rancher himself, it would avoid being in the immediate vicinity of the "City" project. Also, there is less precipitation, less vegetation, and

fewer livestock and wildlife in Coal Valley than in Garden Valley, as their names imply. This Coal Valley alignment would go south before crossing the Golden Gate Mountain Range through Murphy's Gap from Coal Valley to Wild Horse Valley. The Coal Valley alignment then would go south rather than north of the Worthington Mountains Wilderness Study Area and rejoin the current Caliente Corridor northwest of the town of Rachel.

3. Dia Art Foundation has been the conduit for the largest amount of funding for the project. There are also additional philanthropic supporters of Heizer's project in Garden Valley, including numerous Foundations and individuals across the country. Our collective investment in this project of national and international cultural importance would be lost if the rail line traverses the Garden Valley as proposed.

It should also be noted that Michael Heizer, who is considered to be one of the greatest and most important artists of our times, has deep family roots in Nevada; one grandparent was a mining engineer, the other, a geologist. His father was a renowned anthropologist and the author of more than 30 books, several on ancient archeological sites in Nevada. Heizer's knowledge and respect of the Nevada landscape is profound. Over 30 years ago, he chose Garden Valley as the site for "City" for its serenity and seclusion.

A rail line through Garden Valley will also have significant negative impacts on ranchers in the valley. Some of the rancher families settled here over a hundred years ago. The Caliente Corridor through Garden Valley would bifurcate many ranches and grazing allotments and impede the movement of livestock and the migration of wildlife. These socioeconomic and wildlife impacts were not identified in the FEIS, and DOE did not consider them before stating a preference.

4. In closing, we urge DOE to be a "good neighbor" by adopting an alignment that bypasses the Garden Valley and the "City" sculpture entirely. DOE has an opportunity to avoid yet another barrage of lawsuits and avoid alienating Nevada citizens who are not yet among their die-hard opponents. We urge DOE to seize these opportunities.

Sincerely,

Michael Govan

President and Director

Dia Art Foundation

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May 28, 2004

Ms. Robin Sweeney  
Office of National Transportation  
Office of Civilian Radioactive Waste Management  
U.S. Department of Energy  
1551 Hillshire Drive, M/S 011  
Las Vegas, NV 89134

VIA FACSIMILE: 1.800.967.0739

Dear Ms. Sweeney:

Supplementing my other comments regarding the rail alignment to the Yucca Mountain repository dated May 28, 2004, on behalf of Dia Art Foundation I would like to submit two additional procedural comments supporting our fundamental opposition to DOE's selection of Caliente Corridor. In particular, I believe that DOE did not adequately study the five proposed routes in accordance with industry standards, and that DOE did not adequately provide opportunity for public participation in the decision of a rail line.

1. DOE selected the five corridors analyzed in the Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada (FEIS) without adequate study and in violation of National Environmental Policy Act (NEPA). DOE did not inspect the corridors from the ground or the air before selecting them. This lack of inspection is contrary to standard industry practice, and accounts for the DOE's lack of knowledge of the corridors.

DOE failed to comply with NEPA when selecting the five candidate corridors. DOE should have conducted scoping sessions focused on potential rail corridor identification and provided opportunities for public comment before selecting the five corridors analyzed in the FEIS. Complying with NEPA would have informed DOE of the problems associated with the five candidate corridors and of the advantages of alternative corridors, such as the Mina, Crucero, Valley, and Arden corridors, which were wrongly rejected based on insufficient criteria, information, and analyses. NEPA was intended to help government agencies avoid the very mistakes that DOE made in selecting the five candidate corridors without the benefit of local knowledge and public participation.

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2. DOE also selected the Caliente Corridor without adequate study and in violation of NEPA. DOE did not inspect the corridors from the ground and conducted only a cursory over-flight before selecting the Caliente Corridor. This lack of inspection is contrary to standard industry practice, and accounts for DOE's lack of knowledge of the Caliente Corridor prior to its selection. As a result, DOE could not provide a clear explanation and definitive reason for its selection of the Caliente Corridor in its Record of Decision.

DOE violated NEPA by providing inadequate opportunities for public participation in the corridor preference and selection decisions, despite recognition of the need to do so. On page S-2 of the FEIS, DOE said that it would "identify a preference for one of the rail corridors in consultation with affected stakeholders, particularly the State of Nevada." However, DOE identified its preference for the Caliente Corridor without consulting affected stakeholders, including affected property owners. In fact, DOE did not even ask for public comments on its stated preference for the Caliente Corridor and provided inadequate opportunities for public participation before selecting the Caliente Corridor. Again, the Department failed to take advantage of the benefits of public participation, particularly the local knowledge of residents and institutions.

As stated in my other letter, we urge DOE to be a "good neighbor" by adopting an alignment that bypasses the Garden Valley and the "City" sculpture entirely. DOE has an opportunity to avoid yet another barrage of lawsuits and avoid alienating Nevada citizens who are not yet among their die-hard opponents. We urge DOE to seize these opportunities.

Sincerely,

Michael Govan

President and Director

Dia Art Foundation

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